In the High Court of Punjab and Haryana, Chandigarh.

I.T.R. No.65 of 1990

Date of Decision: 8.8.2007

The Commissioner of Income Tax, Patiala.

…Applicant.

Versus

M/s Punjab Financial Corporation Limited, Chandigarh.

…Respondent.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Raj Kapoor Malik, Advocate
for Applicant-Revenue.

Mr.Rohit Sud, Advocate
for Respondent-Assessee

JUDGMENT

M.M.KUMAR, J.

On the directions issued by this Court on 23..8.1988 while deciding I.T.C. No.72 of 1981, the Tribunal has referred following two questions of law arise out of the order of the Tribunal dated 19.12.1980 in I.T.A. No.144 of 1979 in respect of assessment year 1972-73:-

> "1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that order passed by the Commissioner of Income-tax under Section 263 is bad in the law as the doctrine of

merger was applicable?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that order passed by the Commissioner of Income-tax under Section 263 is bad in law as the order of the Income-tax Officer on merits was neither erroneous nor prejudicial to the interests of the revenue?"

Original assessment for the assessment year in question was framed on 30.8.1972 at a total income of Rs.13,12,330/-. The assessee had claimed deduction of Rs.1,03,286/- on account of interest on sticky loans credited to the suspense account. The basis of crediting interest to suspense account was that loanee had defaulted in the payment of interest on the loans and the assess was not likely to receive the same. Accordingly, the interest was neither credited to interest account nor included in the income of the assessee as it had been credited to the suspense account. The Assessing Officer rejected the contention of the assessee and refused to delete the sum of Rs.1,03,286/- from the total income.

On appeal to the Appellate Assistant Commissioner, the order of the Assessing Officer was set aside on 30.6.1976 and he issued directions to the Assessing Officer to frame de novo assessment in accordance with law. In the de novo assessment, the Assessing Officer allowed the deductions of Rs.1,03,286/-. However, he referred to the dividend income of Rs.58,260/- and held the same to be taxable in the hands of the assessee. The de novo assessment was again challenged in appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) accepted the appeal by holding that there was a binding agreement between the

assessee and the Punjab Government which obliges the assessee to pay part of the dividend income as a consideration for having received monies from the Punjab Government for utilization of the same. It was, therefore, held that expenditure of Rs.38,898/- was allowable under Section 57(iii) of the Income Tax Act, 1961 out of the total dividend income of Rs.58,260/-. Accordingly, the assessee was given the relief of Rs.38,898/-.

The Commissioner of Income-tax (Appeals) vide his order dated 29.12.1978 on an appeal filed by the revenue held that an amount of Rs.1,03,286/- was to be included in the taxable income.

The assessee challenged the order of the Commissioner of Income-tax (Appeals) before the Tribunal, which held that the order passed by the Commissioner of Income-tax (Appeals) under Section 263 of the Act was unsustainable in law and upheld the order of the Assessing Officer deleting the amount of Rs.1,03,286/- from the assessable income. In the concluding para, the Tribunal, however, took notice of the following position:-

> "But before we part with the case, we would like to clarify the position regarding the contention of revenue that once an order is set aside by the Appellate Assistant Commissioner nothing survives as the assessment becomes at large. In our opinion, this proposition would hold good where entire assessment is set aside with the directions to make it de novo entirely according to the wisdom of the Income-tax Officer on the facts of the case and the law applicable thereto. But where there is circumscription of the specific directions of the Appellate Assistant Commissioner to be carried out by the Income-tax Officer in respect of a particular item of assessment which has been considered in appellate order that cannot be said to be entirely a matter left to the discretion of the Income-tax Officer as in the case

before us because “the application of the doctrine of merger depends upon the nature of the appellate or revisional order in each case and scope of statutory provisions conferring the appellate or revisional jurisdiction” as held by the Supreme Court in the case of Madura Mills supra”.

After hearing the learned counsel, we are of the view that the question referred has to be answered against the revenue. The Appellate Assistant Commissioner has set aside the whole assessment by issuing directions to the Assessing Officer to frame de novo assessment according to law after considering circular of the Board. The agreement between the assessee and the State Government, was considered and the parties were also granted opportunities to adduce evidence in support of their respective claims. The question as to whether the doctrine of merger would be attracted in the present case has to be answered by keeping in view the order of the Appellate Assistant Commissioner who had set aside the whole assessment and issued directions for de novo assessment. The aforementioned order was accepted by the revenue as well as the assessee. It has attained finality. In such a situation, we do not find that the doctrine of merger would be applicable. In that regard, we may place reliance on the judgment of the Hon'ble Supreme Court in the cases of **“Commissioner of Income Tax, Gujarat-I, Ahmedabad v. Shri Arbuda Mills Ltd., Ahmedabad” (1998) 9 Supreme Court Cases 702**, **“Commissioner of Income Tax, Kohlapur v. Jaykumar B. Patil” (1998) 8 Supreme Court Cases 507**, and **“Hindustan Aeronautics Ltd., Bangalore v. Commissioner of Income Tax, Karnataka-I, Bangalore” (2000) 5 Supreme Court Cases 365**.

In view of the above, we are of the view that the Tribunal has taken incorrect view by holding that the doctrine of merger was applicable and the

order of Commissioner of Income-tax (Appeals) passed under Section 263 of the Act was bad in the eyes of law. Therefore, the reliance of the Tribunal on the judgment of Hon'ble the Supreme Court in the case of **"State of Madras v. Madurai Mills Co. Ltd." AIR 1967 SC 681** is wholly misplaced. The questions are accordingly answered in favour of the assessee and against the revenue.

(M.M.KUMAR)
Judge

August 8 , 2007
dkb

(RAJESH BINDAL)
Judge